

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 02.08.2018	Order Pronounced on : 04.01.2019
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CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.17392 of 2014

L.Venkatesan

.... Petitioner
Vs.

1. The State of Tamil Nadu,
Rep. by the Principal Secretary
to Government,
Home Police (IV) Department,
Secretariat,
Chennai - 9.
 2. The Director General of Police,
Kamarajar Road,
Chennai - 4.
 3. The Additional Director General of Police,
Law and Order,
Kamarajar Road,
Chennai - 4.
 4. The Commissioner of Police,
Chennai Sub Urban Police,
Head Quarter,
Commissioner Office,
Saint Thomas Mount, Chennai-16.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondents 4, 3, 2 and 1 in connection with the orders passed by them in their proceedings in PR.No.38/H.2/2009, dated 02.09.2009, Rc.No.167480/AP.3(3)/2009, dated 12.02.2010, Rc.No.96030/AP.3(3)/2010, dated 09.02.2011, G.O.(2D) No.350, Home (Police-IV) Dept., dated 03.10.2011 and G.O.(MS) No.1083, Home (Police-2) Dept., dated 04.12.2013 respectively and quash the same and direct the respondents to promote the petitioner to the post of Deputy Superintendent of Police with effect from the date of promotion given to his immediate junior and the

consequential promotion to further post with all monetary and service benefits.

For Petitioner : Mrs.M.Srividhya

For Respondents : Mrs.Thangavadhana Balakrishnan
Additional Govt. Pleader

ORDER

When the currency of punishment commences in the case of stoppage of increment, is the main issue raised in this writ petition.

1.1. Postponement of increment without cumulative effect for one year as imposed by the Commissioner of Police on the petitioner on 09.09.2009 and consequent postponement of promotion till 30.06.2011, on the ground that, though order of punishment is dated 09.09.2009, but, the implementation of punishment would commence only from 01.07.2010 and it would extend till the completion of one year (i.e. From 01.07.2010 to 30.06.2011), is called in question in this writ petition.

1.2. Inter alia, the petitioner has also alleged that the rejection of appeal petition by the Additional Director General of Police (on 12.02.2010), dismissal of the revision petition before the Director General of Police (on 09.02.2011), rejection of review petitions by the Government on 03.10.2011 and 13.06.2013 are not speaking orders and hence, they are not justified.

2. The first contention of the learned counsel appearing for the petitioner is that the procedure adopted for conducting enquiry was not fair and proper and therefore, the finding of enquiry has to be set aside in terms of the Judgment of the Supreme Court reported in 2009 2 SCC 570.

3. The second contention of the learned counsel appearing for the petitioner is that the punishment of stoppage of increment without cumulative effect is a minor punishment and it cannot have any adverse impact upon the promotion.

4. The third contention is that the orders of rejection of review petitions and revision petition are all non-speaking orders and they are liable to be set aside in the light of the Judgment of the Supreme Court reported in 2006 11 SCC 147.

4.1. According to the learned counsel for the petitioner, the order of punishment is dated 02.09.2009 (signed on

09.09.2009) and therefore, the currency of punishment would be from 02.09.2009 to 02.09.2010 only; that in the case of the petitioner, the punishment was kept alive between the period 01.07.2010 to 30.06.2011 which is arbitrary and unreasonable and that had also resulted in deprivation of promotion.

4.2. According to the learned counsel for the respondent, though the order of punishment is dated 02.09.2009, which is signed by the Superintendent of Police on 09.09.2009, the punishment (stoppage of increment) commenced only from 01.07.2010 and therefore, the period of one year would be over only by 30.06.2011 and therefore, the promotion could be considered only after 30.06.2011, and therefore, the interpretation given by the petitioner is not correct. Therefore, the main issue to be considered is when the currency of punishment commences in the case of stoppage of increment.

4.3. Contending that punishment would take effect from the date on which it was served on the concerned member of service, the learned counsel appearing for the petitioner relied upon the decision of this Court, reported in the case of A.Theerthagiri v. The Principal Secretary to Government and Ors., (W.P.No.21774 of 2014), dated 09.03.2015, wherein it has been held as follows:-

"15. The amended Rules very clearly provide that punishment would take effect from the date on which it was served on the concerned member of service. The first respondent has virtually flouted this order passed by the Government by rejecting the claim made by the petitioner for implementation of punishment. The rules are applicable not only to the petitioner but equally so, to the first respondent. When the Statute says that punishment would be implemented from the date on which it was served on the employee, the first respondent cannot be heard to say that he would follow only the letter issued by the Government, which has no statutory force...."

4.4. This Court is of the opinion that the said decision squarely applies to the facts of this case.

4.5. The learned counsel for the petitioner relied upon Rules 17 and 18 to Schedule XI of Section 7 (1) of the Tamil Nadu Government Servant Conditions of Service Act, 2016, which is reproduced hereunder for convenient reference:-

"SCHEDULE-XI [Section 7 (1)] PART-A

(17) Any punishment imposed on a member of service under rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned

and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over.

(18) The performance of a member of service for promotion or appointment shall be assessed on the basis of the Annual Confidential Report or Record Sheet written for a period of five years prior to the crucial date. If any adverse remarks are recorded against a member of service in the Annual Confidential Report or Record Sheet within a period of five years prior to the crucial date, his name shall not be considered for inclusion in the approved list. Any adverse remarks relating to a period of five years prior to the crucial date which have not been shown to and acknowledged by the member of service shall be ignored and his name shall be considered for inclusion in the approved list."

Thus, it is clear that the currency of promotion shall take effect from the date on which the said punishment order is served to the member of service concerned and it cannot be postponed to the period commencing from annual increment.

5. In this case, there is no proof to show, when the order was served on the petitioner, therefore, the next immediate date of the order of punishment is taken as the date on which the order was served on the petitioner. Under normal circumstances, the communication is expected to reach the petitioner on the next day, if the order is communicated through post.

6. It was further submitted by the learned counsel appearing for the petitioner that the crucial date for promotion for the post of Deputy Superintendent of Police (Category-II) was on 10.09.2010, the date on which the order is deemed to have been communicated to the petitioner would be 10.9.2009 and the effective one year period would be over by 9.9.2010. The grievance is that the respondent, instead of considering the date for promotion as on 10.09.2010, the respondent had considered the promotion only from 04.12.2013.

7. A perusal of the above Rules would clearly go to show that the currency of punishment was only from 09.09.2009 to 10.09.2010. As per Law, the petitioner is eligible for promotion on and from 10.09.2010. Therefore, the promotion given to the petitioner by an order 13.01.2014, based on the approved panel dated 04.12.2013, is liable to be set aside.

8. Even otherwise, when the punishment imposed is a minor punishment, it would not be an impediment for promotion. It is worth to quote a reported decision of this Court in the case of P.Helen Cecil vs Government Of Tamil Nadu. The relevant observation reads as under:

"7. Therefore it is crystal clear that even as per the above said provision, the imposition of punishment of Censure is only a minor penalty. The learned counsel for the petitioner also rightly placed reliance on the decision of the Division Bench of this Court reported in 2008 (5) MLJ 350 (Subramanian Vs. Government of Tamil Nadu), which held as follows:

"When the employee is imposed upon a punishment of stoppage of increment for two years without cumulative effect which could be construed only as a minor punishment, he could not be denied further promotion solely based on the same, if he is otherwise fit for promotion."

9. In the result, the impugned order is set aside and this writ petition is allowed as prayed for. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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Home Police (IV) Department,
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Law and Order,
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4. The Commissioner of Police,
Chennai Sub Urban Police,
Head Quarter,
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Saint Thomas Mount, Chennai-16.

+1 cc to Ms.M.Srividhya, Advocate Sr.No.1827

W.P.No.17392 of 2014

SS (CO)
CSL/30.01.2019



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